(14)

Office - Supreme Court, U. S.
FILED
NOV 16 1943
CHARLES ELMORE CROPLEY
CLERK

No. 440

Supreme Court of the United States.

OCTOBER TERM, 1943.

ROSE M. O'HARA, *Petitioner*,

v.

MAURICE J. MURPHY, SPECIAL ADMINISTRATOR, ET AL., *Respondents*.

BRIEF OF RESPONDENT MAURICE J. MURPHY, SPECIAL ADMINISTRATOR, OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

MAURICE J. MURPHY,
Special Administrator,
Pro Se.

ADDISON C. MITCHELL & SON, LAW PRINTERS, BOSTON.

INDEX.

	Page
Statement of matter involved and issues	1
Argument	2
I. There was ample evidence that the petitioner relinquished her rights to said policies	2
II. There has been no violation of Article V of the Amendments to the Constitution of the United States	3
III. The issuance of a writ of certiorari is discretionary	4
IV. Erroneous contentions made by the petitioner in her petition for a writ of certiorari	5
Conclusion	5

TABLE OF AUTHORITIES CITED.

Boehmer v. Pennsylvania Railroad Company, 252 U.S. 496	4
Green County, Kentucky, v. Thomas' Executor, 211 U.S. 598	4
Helis v. Ward, 308 U.S. 365	4
Hyde v. Shine, 199 U.S. 62	4
Philadelphia & Reading Coal & Iron Company v. Gilbert, 245 U.S. 162	4
Federal Interpleader Act, Judicial Code, secs. 24, 26, as amended; 28 U.S.C. sec. 41 (26)	2

Supreme Court of the United States.

OCTOBER TERM, 1943.

ROSE M. O'HARA, *Petitioner,*

v.

MAURICE J. MURPHY, SPECIAL ADMINISTRATOR, ET AL., *Respondents.*

BRIEF OF RESPONDENT MAURICE J. MURPHY, SPECIAL ADMINISTRATOR, OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT.

This respondent, Maurice J. Murphy, opposes the granting of a writ of certiorari to review the final judgment of the Circuit Court of Appeals for the First Circuit, entered July 9, 1943, confirming the judgment of the United States District Court for the District of Massachusetts in favor of the respondent.

Statement of Matter Involved and Issues.

The litigation in question involves the right to the proceeds of two insurance policies on the life of Walter E. O'Hara, deceased. The Insurance Company paid into

court the said proceeds, under the Federal Interpleader Act, sections 24 and 26 of the Judicial Code, as amended; 28 U.S.C. sec. 41 (26).

A judge of the District Court of the United States for the District of Massachusetts ordered judgment entered for the respondent on a special master's report; the Circuit Court of Appeals for the First Circuit confirmed the judgment of the District Court of the United States.

The sole material issue involved is whether there was evidence upon which a finding of fact could have been made that the petitioner relinquished any pre-existing rights she may have had to the proceeds of said policies.

Argument.

I. There was Ample Evidence that the Petitioner Relinquished Her Rights to Said Policies.

In this respect the evidence was conflicting. The petitioner denied that she ever relinquished her interest in said policies. The respondent offered evidence to show that the deceased, Walter E. O'Hara, demanded the return of the insurance policies, and engaged Patrick H. Harrington, Esquire, to represent him in this matter. The petitioner engaged Harry P. Cross, Esquire, to represent her. At this time a divorce between the parties was contemplated, and, preliminary thereto, the parties made claims to certain properties. The return of the policies was an incident of the contemplated divorce. On September 21, 1940, the negotiations culminated in the return of the policies of insurance to Walter E. O'Hara. The petitioner willingly returned the policies; her counsel assented thereto. The petitioner, with full knowledge of the legal consequences thereof, and in pursuance of previous arrangements and

an understanding, relinquished all of her right to the proceeds of said insurance policies.

The testimony of the following witnesses supports such a finding: Patrick H. Harrington, Esquire; Harry P. Cross, Esquire; and John W. Broadbent.

The petitioner denied she relinquished her rights to said policies; the finding of fact discards her testimony as unworthy of credence. Her testimony was contradicted by the witnesses above mentioned, to wit, Messrs. Harrington, Broadbent, and Cross.

The conduct of the petitioner in fact, and in law, effected a complete relinquishment of any rights she had in said insurance policies.

The policies, at the death of said Walter E. O'Hara, were payable to his estate; his representative, the respondent, is entitled to the proceeds thereof.

The statement in the petitioner's brief that there was no evidence as to such relinquishment is palpably wrong.

II. There has been No Violation of Article V of the Amendments to the Constitution of the United States.

The petitioner had the right, and the opportunity, and was heard in her effort to enforce her alleged claim to the insurance policies in question. This issue was fully heard by a special master; it was reviewed by the District Court of the United States for the District of Massachusetts; and was heard by the Circuit Court of Appeals of the United States for the First Circuit. Each of the claims in her instant brief concerning the lack of evidence as to the relinquishment of rights to the policies was argued before said courts. There was a plenitude of evidence to support the findings of fact as to this issue. The peti-

tioner had her day in court and has not been deprived of due process of law contrary to the Fifth Amendment. "Due process of law is not concerned with mere afterthoughts."

Helis v. *Ward,* 308 U.S. 365.

This Court should not disturb the findings of fact supported by the evidence made by the District Court of the United States and the Circuit Court of Appeals; this Court need not enter into "a minute analysis of the evidence."

Boehmer v. *Pennsylvania Railroad Company,* 252 U.S. 496.

III. The Issuance of a Writ of Certiorari is Discretionary.

The writ of certiorari should be refused in the exercise of a sound discretion. *The issues raised by the petitioner raise no question of law;* the facts have been found in contradictory evidence, and therefore the petitioner's conduct tends unnecessarily to delay a final ending of this case.

Green County, Kentucky, v. *Thomas' Executor,* 211 U.S. 598.
Hyde v. *Shine,* 199 U.S. 62.
Philadelphia & Reading Coal & Iron Company v. *Gilbert,* 245 U.S. 162.

The findings which have been made are supported by the evidence and should not be disturbed, in the exercise of a sound discretion.

IV. Erroneous Contentions Made by the Petitioner in Her Petition for a Writ of Certiorari.

The statement of the petitioner on page 3 that "This case does not present a question of whether or not there is credible or conflicting evidence" is erroneous. A study of the evidence shows that the evidence on the sole issue of the relinquishment of the insurance policies was highly conflicting. The special master and the District Court of the United States and the Circuit Court of Appeals clearly show this, and, in effect, find as a fact that the petitioner testified falsely. Other similar references on succeeding pages to the effect that there was no evidence of a relinquishment by the petitioner of her rights in the policies are gross misstatements of the evidence and the facts found.

It is noted that on page 7 the petitioner admits conflicting evidence as to the delivery of the policies on September 21, 1940. The evidence and the facts found establish that the petitioner made such delivery with an intent to relinquish all rights in the insurance policies in question.

Conclusion.

The respondent respectfully petitions this Court to deny the issuance of the writ of certiorari.

The case was fully heard on conflicting evidence. No question of law is raised. The exercise of a sound discretion compels the denial of the petitioner's request.

MAURICE J. MURPHY,
Special Administrator,
Pro Se.